



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 28, 1993

Mr. Peter S. Hanke
The University of Texas System
Office of General Counsel
201 West Seventh Street
Austin, Texas 78701-2981

OR93-575

Dear Mr. Hanke:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former article 6252-17a, V.T.C.S.).¹ Your request was assigned ID# 20455.

The University of Texas System (UT) has received a request for copies of bid proposals other than the one submitted by the requestor in response to a request for proposals for a residence hall security card access system. You state that UT has awarded the contract to a competitor of the requestor and contend that section 552.110 excepts the bid proposals from disclosure because they contain commercial or financial information. Pursuant to section 552.305, we solicited briefs from third parties whose proprietary interests are implicated by the request. We received a response from General Meters Corp. and from Harco Industries, Inc., the original requestor. Both companies argue that their bid proposals contain proprietary information that should not be disclosed, apparently in reference to section 552.110 of the Open Records Act.

Section 552.110 excepts from public disclosure either trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. This exception protects the property interests of third parties recognized by the courts. Open Records Decision No. 319 (1982). In *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert denied*, 358 U.S. 898 (1958), the Texas Supreme Court adopted the Restatement of Torts definition of a trade secret. The following criteria determine whether information constitutes a trade secret:

¹We note that V.T.C.S. article 6252-17a was repealed by the 73d Legislature. Acts 1993, 73d Leg., ch. 268, § 46. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

(1) the extent to which the information is known outside [the owner's] business; (2) the extent to which it is known by employees and others involved in [the owner's] business; (3) the extent of measures taken by [the owner] to guard the secrecy of the information; (4) the value of the information to [the owner] and to [its] competitors; (5) the amount of effort or money expended by [the owner] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

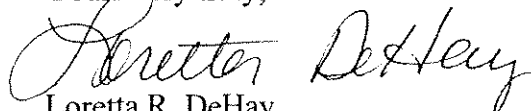
RESTATEMENT OF TORTS, § 757 cmt. b (1939); *See also* Open Records Decision No. 552 (1990).

We must accept a claim that a document is excepted as a trade secret if a *prima facie* case for exception is made and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 592 (1991) at 2. However, when a governmental agency or company fails to provide any evidence of the factors necessary to establish a trade secret claim, we cannot conclude that the trade secret prong of section 552.110 applies. Open Records Decision No. 402 (1983). You have not provided any information to establish a *prima facie* case that the requested information is a trade secret, therefore the trade secret prong of section 552.110 is not applicable to this request for information.

You contend, however, that the information is excepted from disclosure as commercial or financial information. As support for your argument under the second prong of section 552.110, you set forth an argument that release of the information would cause substantial harm to the individual companies and impair UT's ability to obtain the information in the future. We have specifically overruled that analysis of commercial or financial information under section 552.110 in Open Records Decision No. 592. Commercial or financial information is excepted from disclosure only if it is deemed confidential by the common or statutory law of Texas. *Id.* at 7. The requested information is not confidential by statute, nor as discussed above, under the common law doctrine of trade secret. Therefore, section 552.110 does not except the information from disclosure and you must release the information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay

Assistant Attorney General

Open Government Section

LRD/rho

Ref.: ID# 20455

Enclosures: Submitted documents

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